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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,164	04/25/2002	Albert Modl	MODL3004/JEK	4359

23364 7590 04/24/2006

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EXAMINER

NALVEN, ANDREW L

ART UNIT PAPER NUMBER

2134

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/030,164

Applicant(s)

MODL ET AL.

Examiner

Andrew L. Nalven

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8, 10-16 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8, 10-16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)     | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

Claims 8, 10-16, and 18 are pending.

### *Response to Arguments*

Applicant's arguments with respect to claims 8, 10-16, and 18 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 8, 10-13, <sup>14</sup>15-16, and 18 are rejected under 35 U.S.C. 102(e) as being unpatentable over Seal et al US Patent No. 6,549,118 in view of Borza US Patent No. 6,721,891.
2. With regards to claims 8, and 18, Seal teaches an apparatus where a comparison is performed for a match between a person's biometric data stored as

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reference data and the person's redetected biometric data (Seal, column 4 line 64 – column 5 line 4) and authentication is effected if the match is equal to or greater than a predetermined threshold value (Seal, column 5 lines 14-26) characterized in that authentication is refused if the comparison yields a match of the redetected biometric data with the stored reference data which is equal to or greater than a predetermined second threshold value (Seal, column 5 line 47 – column 6 line 12). Seal fails to teach the apparatus being a smart card. However, Borza teaches an apparatus comprising a smartcard with a comparison circuit for biometric authentication (Borza, column 8 line 60 – column 9 line 13, Figure 5). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize Borza's method of using a smartcard with Seal's biometric authentication method because it offers the advantage of preventing software piracy because smartcards are immutable (Borza, column 5 lines 60-65).

3. With regards to claims 10, Seal as modified above teaches the second threshold being a 100% match (Seal, column 5 lines 42-47, exact match).

4. With regards to claim 11, Seal as modified above teaches the reference data and optionally the data records are stored on a data carrier, particular a smart card (Seal, column 4 lines 15-37, server authentication apparatus has disk drive storage).

5. With regards to claims 12-13, Seal as modified above teaches further memory areas in the form of a stack and shift registers (Seal, column 4 lines 25-32, processors with main memory use stacks and shift registers when processing and loading data).

6. With regards to claims 14, Seal as modified above fails to specifically teach a 99% data match being the second threshold; however Seal teaches the step of determining if a data match is too similar (Seal, column 6 lines 4-6 "too similar") and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a 99% data match because it offers the advantage of preventing an unauthorized user from intercepting, copying, and reusing biometric data in an effort to fool an authentication system (Seal, column 5 lines 48-60).
7. With regards to claim 15, Seal as modified above teaches the apparatus is automatically disabled if the second message is present (Seal, column 5 lines 42-47, process terminates).
8. With regards to claim 16, Seal as modified above teaches the issuing of an error message if the second message is present (Seal, column 5 lines 42-47).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew L. Nalven whose telephone number is 571 272 3839. The examiner can normally be reached on Monday - Thursday 8-6, Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on 571 272 6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Andrew Nalven

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*J. H. Long*  
JACQUES H. LONG  
PRIMARY EXAMINER